IN THE BOMBAY HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION (Lod.) NO.501 OF 2003

Mideast Integrated Steel Ltd.
And others. ...Petitioners.

vs.

Lloyds Finance Limited. ...Respondents.

Mr.G.W.Mattos, for Petitioners.

Mr.S.C.Naidu with Y.C.Naidu i/b. C.R.Naidu & Co., for Respondents.

**CORAM: D.K.DESHMUKH,J.**

**DATED: 28th March, 2005.**

**P.C.**:-

1. By this petition, the petitioners challenge the Award made by the sole Arbitrator appointed by the Bombay Chamber of Commerce and Industry, Bombay. The challenge is on two grounds. The first ground is that because the Company petition is admitted against the petitioners and

the provisional Liquidator is appointed, the Arbitrator could not have proceeded with the reference. Sub-Section (1) of Section 446 of the Companies Act,1956, is relevant which reads as under:-

> "446 (1) When a winding up order has been made or the Official Liquidator has been appointed as provisional liquidator, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, against the company, except by leave of the Court and subject to such terms as the Court may impose."

In the present case the winding up order has not yet been passed. The appointment of the provisional liquidator is on 19.9.2002. A reference to the Arbitration was made in February,2002. Even, according to the petitioners the commencement of the arbitral proceedings was on the date on which the statement of claim was filed and that date is 5.8.2002. Thus, when the appointment of the Official Liquidator was made as the provisional liquidator on 19.9.2002 by the order of the Delhi High Court, the arbitral proceedings were pending. Perusal of the above quoted sub-section (1) of Section 446 of the

Companies Act shows that the prohibition on the Court proceedings and the other legal proceedings in relation to the pending proceedings applies in relation to winding up order and not in relation to the order appointing the provisional liquidator. Therefore, in my opinion, the Arbitral Tribunal is right in rejecting the objection to its jurisdiction to continue the proceedings.

2. The second challenge is that though the clause 20 of the Contract which is the arbitration clause provides for a reference of dispute according to B.C.C.I. Rules under the Indian Arbitration Act,1940, since the reference is made after the commencement of 1996's Arbitration Act, the proceedings should be governed by 1996's Act. The appointment of the Arbitrator should have been made under Section 11 of 1996's Act and not under the B.C.C.I. Rules. Perusal of sub-section (2) and (5) of Section 11 of the Act shows that the contention is without any substance. By virtue of section 85(2) of 1996's Act, the proceedings would be governed by the 1996's Act. Sub-section (2) of Section 11 of the Act lays down that the parties by an agreement can decide the procedure for appointing the Arbitrator and the provisions in the 1996's Act about the Chief justice or any person or institution designated by him appointing an

Arbitrator, comes into play only in the absence of any agreement between the parties for appointment of Arbitrator. In the present case, there is subsisting agreement between the parties for appointment of an Arbitrator in accordance with the B.C.C.I. Rules, and therefore, there is no question of there being any requirement of appointment of Arbitrator under Section 11 of the Act. Thus, both the objections raised to the Award have no substance. The petition therefore, is rejected.

C.C. be expedited.

28.3.2005 ---